

# Resolving disputes in incorporated associations (Vic)

## Legal information for Victorian incorporated associations

### This fact sheet covers:

- ▶ following a dispute resolution procedure
- ▶ the kinds of internal disputes a Victorian incorporated association can go to court about, and
- ▶ what happens if legal action is taken against your association

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**This fact sheet is relevant to Victorian incorporated associations. If your community organisation has another legal structure, this fact sheet does not cover your circumstances.**

**For some types of internal disputes, a Victorian incorporated association may go to court to resolve the dispute as a last resort.**

Taking court action is stressful, time consuming, and is often very expensive. Generally, court action can only be considered when all other efforts to resolve a dispute have failed.

Courts have also shown that they are generally reluctant to interfere in the internal affairs of community organisations. It's therefore sensible to try to resolve all disputes through negotiation or mediation.

### Disclaimer

This fact sheet provides general information for Victorian incorporated associations about resolving disputes in incorporated associations. This information is intended as a guide only and is not legal advice. If you or your organisation has a specific legal issue, you should seek legal advice before deciding what to do.

Please refer to [the full disclaimer](#) that applies to this fact sheet.

### An association

An incorporated association has a separate legal identity from its members.

The *Associations Incorporations Reform Act 2012 (Vic)* (**AIR Act**) states that in Victoria, 'association' means an association, society, club, institution or body formed or carried on for any lawful purpose and that has not fewer than five members.

An 'incorporated association' means an association incorporated under the AIR Act.



## What is an internal dispute?

An internal dispute is essentially a dispute or conflict between the people who are bound by the rules of the incorporated association (ie. members and the committee of management).

Common internal disputes can arise between:

- a member of the association and another member
- a member of the association and the rest of the association, and
- a member and the committee

There may be other situations where disputes can arise.

## Which dispute resolution procedure applies?

When trying to resolve an internal dispute, your association must observe:

- the legal requirements under the [Associations Incorporation Reform Act 2012 \(Vic\) \(AIR Act\)](#), and
- your association's rules or 'constitution' (the written document that sets out how the association is governed)

Under the AIR Act, an incorporated association's rules must contain a dispute resolution procedure (sometimes called a 'grievance procedure') for disputes between members and disputes between a member and the association itself.

Your association can set out its own dispute resolution procedure in its rules, but if it doesn't, the dispute resolution procedure in the model rules (see below) will automatically apply.



### Model rules

The model rules are set out in Schedule 4 of the [Association Incorporation Reform Regulations 2012 \(Vic\) \(AIR Regulations\)](#) and published on the [Consumer Affairs website](#). Your association can choose to use the model rules or write its own rules.



If your dispute is an external dispute (for example between your association and a client or a member of the public), see [our webpage on handling disputes and conflicts](#).



### Caution

Applying to court may exacerbate tension and adversely affect relationships in your incorporated association. It should be avoided if you have any alternatives. Don't go to court unless you have considered the risks very carefully and sought legal advice.

### Before going to court, you generally must try to resolve the dispute using:

- your association's dispute resolution procedures
- your association's disciplinary procedures (if any) to remove a troublesome member or committee member, or
- negotiation or mediation

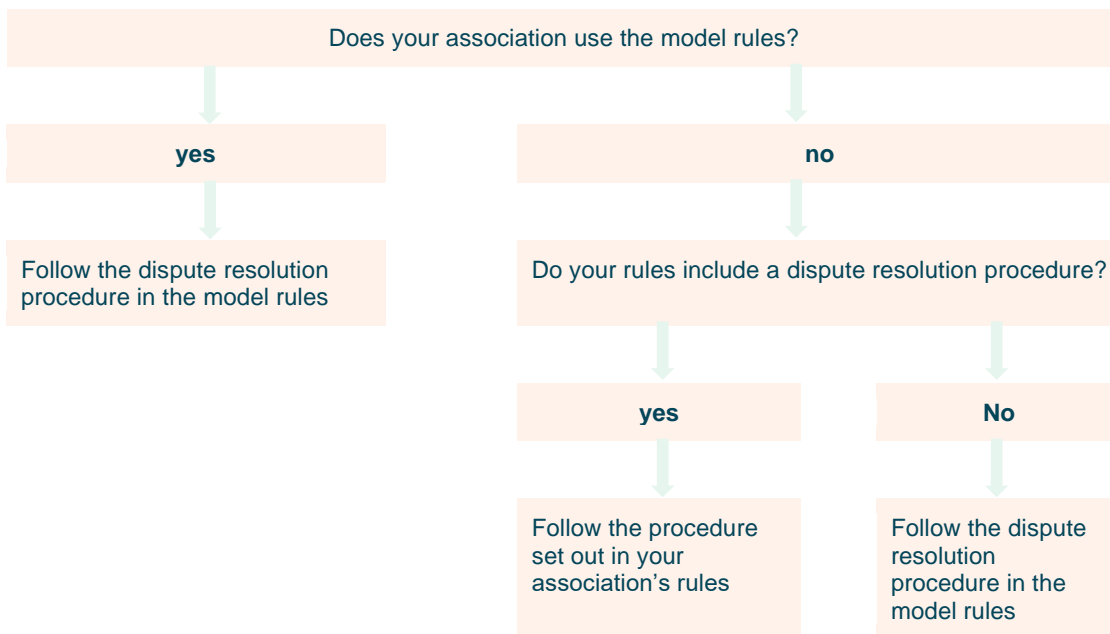


The [Dispute Settlement Centre of Victoria](#) provides free dispute resolution services across Victoria to eligible applicants. If the Centre believes that its services are not suitable to assist you in resolving your dispute, it will refer you to a more suitable service.



For more information, see [our webpage on disputes with members](#) and [our webpage on using mediation to resolve conflicts and disputes](#).

### Use this flow chart to work out which dispute resolution procedure applies:



### If the model rules apply, the process is as follows:

- the parties to the dispute must attempt to resolve it between themselves within 14 days
- if the parties are unable to resolve the dispute within 14 days of the dispute coming to the attention of each party, they must, within a further 10 days, notify the committee of the dispute, agree to or request the appointment of a mediator, and attempt to settle the dispute through mediation
- the appointed mediator will not determine the dispute, but must give each party a fair and equal opportunity to be heard and should assist the parties in attempting to reach a negotiated outcome, and
- if the mediation process does not resolve the dispute, the parties may then use other legal processes to attempt to resolve the dispute (for example, court action)



## Which internal disputes can be taken to court?

The AIR Act provides for two main types of court actions that stem from escalated internal dispute situations:

- non-compliance with the association's rules, and
- oppressive conduct



### Note

This fact sheet provides information about internal disputes and does not cover:

- other types of court actions that may be available in certain circumstances such as breach of contract, discrimination and negligence, or
- potential criminal and civil consequences of a community organisation breaching the AIR Act, for example by way of fraud or dishonest use of position



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## Compliance with the association's rules and purposes

### What is non-compliance with the association's rules and purposes?

An incorporated association must not:

- exercise a power that is not allowed under its rules
- exercise a power that its rules restrict it from exercising, or
- act outside the scope of its purposes (the activities it was established to perform – these are set out in the rules and are sometimes called 'objects')

If an incorporated association does any of these things, the association, a member of the association, or the Registrar (if it's in the public interest) can apply to the Magistrates' Court to enforce an incorporated association's rules.

### What can the court do?

If the court finds that incorporated association has done any of these things, it can make an order to:

- direct that the rules must be performed or followed by anyone under a duty to perform or follow them
- restrain the incorporated association from acting outside the scope of its statement of purposes, or
- declare what the rights or obligations of members of the incorporated association are, or what the rights or obligations of the incorporated association are

Even if a party proves that the rules or purposes have been contravened, the magistrate can refuse to make an order in the case if they think:

- the issue is trivial



- given the circumstances, it was unreasonable for one or both of the parties to have brought the matter to the court, or
- the unreasonable or improper conduct of a party has resulted in the court action, or has added to the cost of the court proceedings

## Treating a member unfairly or acting against the interests of members (oppressive conduct)

A member (or former member) of an incorporated association can apply to the Magistrates' Court for an order that the association has engaged in, or proposes to engage in, 'oppressive conduct'.



### Note

If a former member is taking an association to court for an order relating to oppressive conduct, the application must be made within six months of the person no longer being a member, unless the court gives leave for that time to be extended (but only if there is sufficient public interest to do so).

### What is 'oppressive conduct'?

Oppressive conduct means acting, or refusing or failing to take action that is:

- unfairly prejudicial to, or unfairly discriminatory against, a member (including in the member's capacity as a member of the committee), or
- against the interests of the members of the incorporated association as a whole

### What can the court do?

If the court finds there is or has been oppressive conduct, it can make an order that:

- regulates the conduct of the incorporated association's affairs in the future
- directs the incorporated association to start, defend or discontinue a court action, or authorises a member of the association to do so on behalf of the association
- stops a person from doing a specific act or thing
- requires a person to do a specific act or thing
- the rules of the association be altered
- a former member be reinstated, or
- a person's membership of the association be terminated

The court may also make any other order needed to remedy the oppressive conduct, except an order that the incorporated association must be wound up.

If the court considers that the appropriate outcome is for the association to be wound up, the case must be transferred to the Supreme Court.



### Case example – oppressive conduct

In *Christine Moala and Others v Free Wesleyan Church of Tonga in Australia (Victoria) Inc* [2022] VSC 335, an association's committee had rejected a number of applications for membership of the association.

A group of members argued that the rejected applicants met the eligibility criteria under the association's rules. They applied to the court for an order to direct the association observe its rules as well as orders in relation to oppressive conduct. The association argued that it was in its discretion to reject or accept applications.

The court found that the committee:

- wasn't bound to accept the applications for membership, even if they met the eligibility requirements, but
- must exercise its discretion in good faith and having regard to the purposes of the association

In the circumstances, the court decided the committee had exercised this power appropriately and it was not oppressive conduct to reject the applications.

The court also considered what may be oppressive conduct in assessing membership applications and said a committee can't:

- make enquiries of applicants, or impose requirements, that have no rational connection to whether they satisfy the eligibility criteria
- make the application process harder on some groups of applicants
- reject people it doesn't like or who were unsuccessful candidates for the committee, or
- reject people because they have different views about certain procedures or operations of the association

### Winding up orders

A Court may order that an incorporated association be wound up voluntarily if the association by special resolution resolves that it be wound up voluntarily.

Alternatively, the Supreme Court may order the winding up of an incorporated association if:

- the association suspends its operations for a whole year
- the association is unable to pay its debts
- the association has secured pecuniary profit for its members
- the association has, as trustee, security pecuniary profit for its members
- the association has engaged in activities outside the scope of its purpose, or
- the court is of the opinion that it is just and equitable that the association be wound up

An application for the winding up of an incorporated association must be made by:

- the association
- a member of the association
- a creditor of the association
- the Registrar, or
- the statutory manager of the association



### Remember

Even court applications that seem simple or straightforward can become expensive and lengthy.

The court may order a party (including a successful one) to pay the legal costs of the other party if the court thinks that:

- the application was trivial or unreasonable, or
- the unreasonable or improper conduct of a party has caused the application or added to the cost of proceedings

## What if a member takes your association to court?

If your association receives a letter or court document about a 'legal action', seek legal advice immediately because time limits are likely to apply in relation to defending legal actions.



For more information, go to [our webpage on handling disputes and conflicts](#), which includes fact sheets on being taken to court and responding to a subpoena.

## How do you know if court action is being taken about an internal dispute?

There are a number of ways your association may find out about legal action arising from an internal dispute.

### Letter

Your association may receive a letter demanding that you do something (for example, pay money) or stop doing something (for example, holding a meeting).

The letter may threaten legal action if your association doesn't comply with the demand. Similar threats may be made in person or over the phone.

A letter (or call) threatening legal action does not mean that the person who wrote the letter will take legal action. However, you should seek legal advice about the likelihood of the legal action occurring and what defences your association may have.

Also see the comments below regarding steps to take if a member takes action.

### Complaint

A complaint form (Form 5A) is used to start legal action in the Magistrates' Court in Victoria.

If a person decides to take your association to court about an internal dispute, they 'commence proceedings' and will be known as the 'plaintiff'. If they commence proceedings against your association, your association will be known as the 'defendant'.

The plaintiff takes their complaint form to the court to be stamped and a copy is then 'served on' (officially delivered to) the defendant.

The document gives the basic details of the claim (the plaintiff's side of the case).

Read all of the documents carefully and seek legal advice if your association receives these documents.

It's important to seek advice and take action as soon as possible. If your association intends to defend the proceedings, very short time frames can apply for you to notify the court.



For more information, see [the Magistrates' Court webpage on starting a civil matter](#).

## What should you do if a member takes legal action against your association over an internal dispute?

<b>Seek legal advice</b>	Seek legal advice on the most appropriate course of action for your association and what defences it may have.
<b>Make sure the right people know</b>	Your committee should be informed, but there may be reasons (for example, privacy reasons) why you should not inform all staff or volunteers about a legal action. Check this with your lawyer.
<b>Notify your insurer</b>	Check your insurance policies cover legal action and notify your insurer immediately, if you have one.

## What time limits apply?

Proceedings for an offence against the AIR Act may not be started any later than three years after the commission of the alleged offence.

## Can your incorporated association be required to pay legal costs?

Yes. Incorporated associations are treated in the same way as any other plaintiff or defendant in legal proceedings.

Generally, costs are awarded against the party who loses the case (which means the losing party needs to pay their own court costs as well as some of the costs of the party that won). So an incorporated association may be required to pay legal costs (if ordered by the court). The amount of costs payable to the other side depends on several factors. You should seek legal advice at the beginning of any dispute for further information about costs.

## Doesn't being an incorporated association mean people can't take you to court?

No. Just because your association is incorporated doesn't mean people can't take legal action against your organisation.

The benefit of 'limited liability' that comes with incorporation is that members of the association are not personally liable for debts of the association (including legal costs).

Limited liability does **not** mean that your association is immune to legal action.

It is important to acknowledge that the association may take disciplinary action against a member if the member:

- has failed to comply with the rules of the association
- refuses to support the purposes of the association, or
- has engaged in conduct prejudicial to the association



For more information on limited liability and the responsibilities of board members, see [our webpage on responsibilities of the board and committee members](#).